

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS

RICHARD HENDERSON,

Plaintiff,

v.

AMERICAN AMICABLE LIFE
INSURANCE COMPANY OF TEXAS,
(PIONEER AMERICAN INSURANCE),

Defendants.

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Civil Action No. 4:21-cv-3416

Jury Trial Demanded

AMENDED COMPLAINT

RICHARD HENDERSON (hereinafter referred to as “Plaintiff”), by and through his attorneys, KIMMEL & SILVERMAN, P.C., alleges the following against AMERICAN AMICABLE LIFE INSURANCE COMPANY OF TEXAS (hereinafter referred to as “AMERICAN AMICABLE”) and PIONEER AMERICAN INSURANCE (hereinafter referred to as “PIONEER”) (hereinafter collectively referred to as “Defendants”):

INTRODUCTION

1. Plaintiff’s Amended Complaint is based on the Telephone Consumer Protection Act (“TCPA”), 47 U.S.C. §227, *et seq.*

JURISDICTION AND VENUE

2. This Court has subject-matter jurisdiction over the TCPA claims in this action under 28 U.S.C. § 1331, which grants this court original jurisdiction of all civil actions arising under the laws of the United States. See Mims v. Arrow Fin. Servs., LLC, 565 U.S. 368, 386-87 (2012) (confirming that 28 U.S.C. § 1331 grants the United States district courts federal-question subject-matter jurisdiction to hear private civil suits under the TCPA).

1 14. At all times relevant hereto, Plaintiff, Richard Henderson, maintained a cell
2 phone, the number for which was (832) XXX-7629.

3 15. Plaintiff registered that cell phone number on the Federal Do Not Call Registry
4 on November 11, 2010.

5 16. Plaintiff's cellular telephones are primarily used for residential purposes.

6 17. Mr. Henderson registered these cell phone numbers on the Do Not Call list in
7 order to obtain solitude from invasive and harassing telemarketing calls.

8 18. Defendants are insurance agencies that sell to consumers, *inter alia*, life
9 insurance policies.

10 19. Pioneer and American Amicable are associated insurance companies.

11 20. Upon information and belief, Pioneer is a company that operates within the
12 umbrella organization, American Amicable.

13 21. Defendants hire telemarketers who do not disclose their identities to sell
14 Amicable and Pioneer insurance policies.

15 22. Upon information and belief, Defendants worked in concern and contracted with
16 telemarketers whose identities remain unknown.

17 23. Between July 2020 through at least March of 2021, Defendants placed a series of
18 solicitation calls to Plaintiff in order to sell Plaintiff a life insurance policy.

19 24. Mr. Henderson did not consent to those calls from Defendants.

20 25. Defendants' solicitation calls were not made for "emergency purposes."

21 26. Defendants knew their calls were unwanted, therefore, all calls could have only
22 been made solely for purposes of harassment.
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27. Defendants' incessant calls were bothersome, disruptive, and frustrating for Plaintiff to endure.

28. In total, Defendants placed at least 18 calls to Plaintiff, at date/times including the following calls to his personal phone ending in 2765.

Date/Time:	Caller ID:
July 1, 2020 4:30 pm Central	(281) 571-0865
July 17, 2020 12:46 pm Central	(281) 929-3263
July 24, 2020 3:57 pm Central	(281) 544-3353
October 5, 2020 2:22 pm Central	(281) 390-5970
November 4, 2020 4:25 pm Central	(281) 658-9707
February 17, 2021 2:45 pm Central	(561) 855-5956
February 17, 2021 2:57 pm Central	(561) 316-1353
March 3, 2021 2:42 pm Central	(270) 341-3324
March 15, 2021 7:00 pm Central	(937) 610-1765

29. Upon information and belief, Plaintiff received additional calls to the phone number ending in 2765 from Defendants not included in the above list.

30. Plaintiff additionally received calls to the phone number ending in 7629 which is maintained by Plaintiff, including the following calls:

Date/Time:	Caller ID:
November 2, 2020 1:40 pm Central	(832) 232-0163
November 9, 2020 4:12 pm Central	(832) 256-5401
December 4, 2020 10:03 am Central	(832) 286-8275
December 4, 2020 10:54 pm Central	(832) 260-0151
December 8, 2020 3:00 pm Central	(832) 239-1950
February 1, 2021 6:40 pm Central	(832) 298-2074
February 16, 2021 9:08 am Central	(832) 247-4620
February 17, 2021 2:24 pm Central	(832) 290-1572
March 18, 2021 7:19 pm Central	(832) 252-5317

31. Upon information and belief, Plaintiff received additional calls from Defendants not included in the above-list.

1 32. Many of the calls placed by Defendants to Mr. Henderson began with a pause
2 followed by a beep, which was then followed by someone greeting Mr. Henderson, but only
3 after Mr. Henderson spoke.

4 33. For instance, in a call placed by Defendants on February 17, 2021, when Plaintiff
5 answered the call there was a long pause, followed by a beep, then a representative answered
6 the phone stating he was “John with American Senior Benefits.” The representative began
7 asking Plaintiff personal questions to which Plaintiff stated he would only discuss these matters
8 with a licensed agent. Following Plaintiff’s refusal to disclose personal information with any
9 individual other than a licensed agent, the line was disconnected.

10 34. Defendants’ utilized an automatically generated and/or pre-recorded voice when
11 calling Plaintiff.

12 35. During the October 5, 2020 call, it was apparent that Defendants utilized
13 “soundboard technology” where pre-recorded audio clips are played to “interact” with a
14 consumer with the intention of making the consumer believe s/he is communicating with a live
15 person.
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17 36. Plaintiff answered a call from Defendants on October 5, 2020 where Defendants
18 were selling a low cost final expense insurance plan. In that call, Defendants utilized
19 “soundboard” technology which purported to be a man named “James.” The voice at times
20 sounded computerized and at times sounded like a live person. As the interaction progressed, it
21 was clear Plaintiff was not speaking with an actual person but with a soundboard system and the
22 natural sounded voice was pre-recorded. For instance, Plaintiff asked the voice who he was
23 supposed to be talking to. The voice responded, “Now I have one of my insurance consultants
24 who will further assist you, so please stay with me, okay?” Plaintiff, responded by telling the
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1 voice he would not be giving him the information because he wasn't the licensed agent. The
2 voice responded by saying, "Now I have one of my insurance consultants who will further assist
3 you, so please stay with me, okay?"

4 37. The interaction was strikingly non-communicative and Defendants' responses
5 were repetitive and contextually inappropriate to the point where it became apparent Plaintiff
6 was communicating with soundboard technology rather than a live person.

7 38. These unwanted calls continued despite Mr. Henderson's cellular phone numbers
8 being on the Do Not Call Registry since 2010.

9 39. Defendants did not have Plaintiff's consent to call him on his cellular telephone
10 numbers.

11 40. Plaintiff did not request information regarding final expense life insurance.

12 41. Plaintiff requested Defendants stop contacting Plaintiff on or about July of 2020.

13 42. However, the calls continued.

14 43. As a result of the persistence of the unwanted solicitation calls, Mr. Henderson
15 tried to identify the company calling him. Plaintiff there by attempted to gather information
16 about the company that was behind the calls. Plaintiff asked on many occasions for the agent to
17 state which company they were calling from and to provide a website so Plaintiff could do his
18 own research. Most of these attempts resulted in refusal by the agent or the line being
19 disconnected.
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21 44. For instance, in a call placed by Defendants on November 4, 2020, Defendants'
22 agent asked Plaintiff who would be a beneficiary to his insurance policy. Plaintiff stated that he
23 would not provide that personal information to anyone other than a licensed agent, and
24 requested more information about the company, namely where it was located. Defendants'
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1 agent responded by saying “I am located in back of your home” and shortly thereafter hung up
2 the phone and ended the call.

3 45. Ultimately, Plaintiff continued to get the unwanted calls, and continued to obtain
4 the identity of the company/companies responsible for the unwanted calls.

5 46. During the March 3, 2021 call, Plaintiff spoke with “Amy”. Upon requesting the
6 identity of the company the agent worked for, the agent identified American Amicable Life
7 Insurance. After “Amy” had gathered basic information, the call was transferred to “Geri.”
8 Plaintiff requested who the insurance would be through, and “Geri” identified Pioneer
9 American Insurance.

10 47. At the end of this call, Plaintiff asked that the calls stop.

11 48. Defendants continued to call Plaintiff for purposes of harassing Plaintiff through
12 March 2021.

13 49. As a result of the foregoing, Plaintiff experienced frustration, annoyance,
14 irritation and a sense that her privacy has been invaded by Defendants.

15 50. The foregoing acts and omissions were in violation of the TCPA and Texas
16 Business and Commercial Code.

17 **PRAYER FOR RELIEF**

18 **Direct and Vicarious Liability**

19 51. To the extent Defendants outsourced their illegal robocalling to any third party,
20 Defendants are still liable for calls that violate the TCPA.

21 52. On May 9, 2013, the FCC determined that this was not a basis for avoiding
22 liability within a Declaratory Ruling that held that sellers may not avoid liability by outsourcing
23 telemarketing:
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1 [A]llowing the seller to avoid potential liability by outsourcing its
2 telemarketing activities to unsupervised third parties would leave
3 consumers in many case without an effective remedy for telemarketing
4 intrusions. This would particularly be so if the telemarketers were
5 judgment proof, unidentifiable, or located outside of the United States, as
6 is often the case. Even when third-party telemarketers are identifiable,
7 solvent, and amendable to judgment limiting liability to the telemarketer
8 that physically places the call would make enforcement in many cases
9 substantially more expensive and less efficient, since consumers (or law
10 enforcement agencies) would be required to sue each marketer separately
11 in order to obtain relief. As the FTC noted, because “[s]ellers may have
12 thousands of “independent” marketers, suing one or a few of them is
13 unlikely to make a substantive difference for consumer privacy.

14 May 2013 FCC Ruling, 28 FCC Rcd at 6588 (internal citations omitted).

15 53. Moreover, the May 2013 FCC ruling rejected a narrow view of the TCPA
16 liability, including the assertion that a seller’s liability requires a finding of formal actual
17 agency and immediate direction and control over third parties who place a telemarketing call.
18 Id. at 6587 n. 107.

19 54. The evidence of circumstances pointing to apparent authority on behalf of the
20 telemarketer “should be sufficient to place upon the seller the burden of demonstrating that a
21 reasonable consumer would not sensibly assume that the telemarketer was acting as the seller’s
22 authorized agent.” Id. at 6593.

23 55. Defendants hired, permitted, and enjoyed the benefits of robocalling.

24 56. Defendants are not permitted under the law to outsource and contract their way
25 out of liability by directing and benefitting from unlawful calls.

57. For the counts identified below, telemarketers who operate anonymously and
whose identities remain unknown placed calls pursuant to agreements with Defendants to solicit
Pioneer and Amicable insurance policies.

58. For the counts identified below, Defendants are vicariously liable for the
unlawful calls.

COUNT I
DEFENDANTS VIOLATED THE TCPA 47 U.S.C. § 227(b)

59. Plaintiff incorporates the foregoing paragraphs as though the same were set forth at length herein.

60. The TCPA prohibits placing calls using an automatic telephone dialing system or automatically generated or prerecorded voice to a cellular telephone except where the calling has the prior express consent of the called party to make such calls or where the call is made for emergency purposes. 47 U.S.C. § 227(b)(1)(A)(iii).

61. Defendants initiated calls to Plaintiff's telephone numbers using an automatically generated or pre-recorded voice.

62. Defendants' calls were not made for "emergency purposes."

63. Defendants' calls to Plaintiff's cellular telephones were made without any prior express written consent.

64. Defendants contacted Plaintiff despite the fact that Plaintiff has been on the Do Not Call Registry and despite the fact that Plaintiff told Defendants to stop their telephone solicitations.

65. Defendants' acts as described above were done with malicious, intentional, willful, reckless, wanton and negligent disregard for Plaintiff's rights under the law and with the purpose of harassing Plaintiff.

66. The acts and/or omissions of Defendants were done unfairly, unlawfully, intentionally, deceptively and fraudulently and absent bona fide error, lawful right, legal defense, legal justification or legal excuse.

1 67. As a result of the above violations of the TCPA, Plaintiff has suffered the losses
2 and damages as set forth above entitling Plaintiff to an award of statutory, actual and treble
3 damages.

4 **COUNT II**
5 **DEFENDANTS VIOLATED THE TCPA 47 U.S.C. § 227(c)**

6 68. Plaintiff incorporates the foregoing paragraphs as though the same were set forth
7 at length herein.

8 69. The TCPA prohibits any person or entity of initiating any telephone solicitation
9 to a residential telephone subscriber who has registered his or her telephone number on the
10 National Do-Not-Call-Registry of persons who do not wish to receive telephone solicitations
11 that is maintained by the Federal Government. 47 U.S.C. § 227(c).

12 70. Defendants' contacted Plaintiff despite the fact that Plaintiff has been registered
13 on the Do Not Call Registry since 2010.

14 71. Defendants' acts as described above were done with malicious intentional,
15 willful, reckless, wanton and negligent disregard for Plaintiff's rights under the law and with the
16 purpose of harassing Plaintiff.

17 72. The acts and/or omissions of Defendants were done unfairly, unlawfully,
18 intentionally, deceptively and fraudulently and absent bona fide error, lawful right, legal
19 defense, legal justification or legal excuse.

20 73. As a result of the above violations of the TCPA, Plaintiff has suffered the losses
21 and damages as set forth above entitling Plaintiff to an award of statutory, actual and treble
22 damages.
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- a. All actual damages Plaintiff suffered (as provided under 47 U.S.C. § 227(b)(3)(A));
- b. Statutory damages of \$500.00 per violative call (as provided under 47 U.S.C. § 227(b)(3)(B));
- c. Additional statutory damages of \$500.00 per violative call (as provided under 47 U.S.C. § 227(c));
- d. Treble damages of \$1,500.00 per violative call (as provided under 47 U.S.C. § 227(b)(3));
- e. Additional treble damages of \$1,500.00 per call (as provided under 47 U.S.C. § 227(c);
- f. Injunctive relief (as provided under 47 U.S.C. § 227(b)(3) and (c)); and
- g. Any other relief this Honorable Court deems appropriate.

PLEASE TAKE NOTICE that Plaintiff, RICHARD HENDERSON, demands a jury trial in this case.

Dated:

PLAINTIFF'S AMENDED COMPLAINT